

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

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|---------------------------|---|-------------------------------|
| In the Matter of: |) | Docket HWCA <u>01/02-4001</u> |
| |) |) |
| Phibro-Tech, Incorporated |) | CONSENT ORDER |
| 34400 Zwissig Way |) | |
| Union City, CA 94587 |) | Health and Safety Code |
| CAD981160948 |) | Section 25187 |
| |) | |
| Respondent. |) | |
| _____ |) | |

The State Department of Toxic Substances Control (Department) and Phibro-Tech, Incorporated, Union City Facility (Respondent) enter into this Consent Order and agree as follows:

1. Respondent receives, generates, handles, treats, stores, and ships off-site hazardous waste at 34400 Zwissig Way, Union City, CA 94587 (Site).

2. The Department inspected the Site on June 13, 19, and 23, 2000 and June 26 and 27, 2001. The approved 1986 Part A and Operation Plan (1986 OP) were used to identify authorized units for these inspections.

3. The Department alleges the following violations:

3.1. The Respondent violated California Code of Regulations, title 22, section 66265.192 (a)(5)(B) in that on or about June 13, 19, and 23, 2000 and June 26 and 27, 2001,

Respondent failed to have a tank system with adequate anchoring to prevent floatation or dislodgement where the tank system is located within a seismic fault zone, to wit: Tanks T-10, T-32, T-7, R-15, T-31, T-3, R-2, R-6, and R-7 require anchoring modifications as stated on the tank certifications. Respondent submitted on August 8, 2001, a schedule identifying the type of modifications required and a schedule for the modifications to be completed.

3.2. The Respondent violated California Code of Regulations, title 22, section 66265.193 (e)(1)(C) and (e)(2)(D) in that on or about June 26 and 27, 2001, Respondent failed to keep secondary containment system free of cracks or gaps and failed to provide an impermeable coating or lining that will prevent migration of waste into the concrete, to wit: there were cracks, gaps, and deteriorated lining in Containment Areas #1, #3, and #4, and in the Bulk Storage Loading Area.

4. A dispute exists regarding the alleged violations.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

6. Jurisdiction exists pursuant to Health and Safety Code section 25187.

7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

9. Respondent admits the violations described above.

SCHEDULE FOR COMPLIANCE

10. Respondent shall comply with the following:

10.1. The Respondent submitted on August 10, 2001, a written schedule for completion of the seismic upgrades, which were to start by October 8, 2001 and be completed by December 28, 2001. However, on September 19, 2001, the Respondent notified the Department with the intention to close the facility and not pursue the permit application. Effective immediately, the Respondent shall follow the approved closure plan and remove all storage tanks and the hazardous waste contents of such tanks.

10.1.2. The Respondent submitted on August 10, 2001, a written schedule for completion of the containment area upgrades, which were to start by September 21, 2001 and be completed by January 14, 2002. However, on September 19, 2001, the Respondent notified the Department with the

intention to close the facility and not pursue the permit application. Effective immediately, the Respondent shall follow the approved closure plan and close and decontaminate all secondary containment areas.

10.2. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously to:

Nennet V. Alvarez
Branch Chief
Department of Toxic Substances Control
Statewide Compliance Division
Cypress/San Diego Branch
5796 Corporate Avenue
Cypress, California 90630

Charlene Williams
Branch Chief
Department of Toxic Substances Control
Statewide Compliance Division
Northern California Branch
700 Heinz Avenus, Suite 200
Berkeley, California 94710

10.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

10.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

10.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

10.7. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.8. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any

way pertaining to work undertaken pursuant to this Consent Order.

10.9. Sampling, Data, and Document Availability:

Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

10.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

10.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

10.12. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

11. Respondent shall pay the Department a total of \$10,000.00, of which \$5,000.00 is penalty and \$5,000.00 is reimbursement of the Department's costs. The payment shall be made in two equal installments of \$5,000.00, with the first payment due within thirty (30) calendar days of the effective date of this Consent Order, and the last payment due within sixty(60) calendar days of the effective date of this Consent Order. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondent and Docket Number as shown in the heading of this Consent Order. Respondent shall deliver the payment together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent:

To:

Nennet V. Alvarez
Branch Chief
Department of Toxic Substances Control
Statewide Compliance Division
Cypress/San Diego Branch
5796 Corporate Avenue
Cypress, California 90630

James J. Grace
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd Floor
P.O. Box 806
Sacramento, California 95812-0806

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

12.6. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or California Regional Water Quality Control Board.

Dated: May 20, 2002

Original signed by Mark Alling

Signature of Respondent's

Representative

Mark Alling - General Manager

Typed or Printed Name and Title

of

Respondent's Representative

Dated: May 21, 2002

Original signed by Nennet

V.Alvarez

Nennet V. Alvarez, Branch Chief

Department of

Toxic Substances Control